

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

AMMD, LLC,

Plaintiff,

v.

VITA-GEN, INC., and
VITA-GEN LABORATORIES, LLC,

Defendants.

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1:20-CV-200-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Dustin Howell concerning Plaintiff AMMD, LLC's ("AMMD") Motion for Summary Judgment, (Dkt. 99), and Defendants Vita-Gen, Inc. and Vita-Gen Laboratories, LLC's (collectively, "Vita-Gen") Motion for Partial Summary Judgment, (Dkt. 100). (R. & R., Dkt. 106). AMMD timely filed objections to the report and recommendation. (Objs., Dkt. 107).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C.

§ 636(b)(1)(C). Because AMMD timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules the objection and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Dustin Howell, (Dkt. 106), is **ADOPTED** on the basis that there was no agreement as to an essential term, as described in the report and recommendation. The Court reaches that conclusion even if a release of liability is not an essential term of a settlement agreement

under Texas law because, instead of a release, there is an agreement to request that the court enter a consent (or agreed) judgment awarding judgment in favor of the party receiving the settlement monies and against the party paying the settlement.

IT IS FURTHER ORDERED that AMMD's motion for summary judgment, (Dkt. 99), is **DENIED. IT IS FINALLY ORDERED** that Vita-Gen's motion for summary judgment, (Dkt. 100), as to Count Five of the Second Amended Complaint is **GRANTED**.

SIGNED on December 5, 2023.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE